

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PETER J. AND DONNA M. ROGERS	:	DETERMINATION
	:	DTA NO. 818950
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1993.	:	

Petitioners, Peter J. and Donna M. Rogers, 230 Cliff Park Road, Ithaca, New York 14850, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1993.

A small claims hearing was held before Frank W. Barrie, Presiding Officer, at the offices of the Division of Tax Appeals, 44 Hawley Street, Binghamton, New York, on October 15, 2002 at 1:00 P.M., which date began the three-month period for the issuance of this determination. Petitioner Peter J. Rogers appeared *pro se* and on behalf of his wife, petitioner Donna M. Rogers. The Division of Taxation appeared by Barbara G. Billet, Esq. (Mac Wyszomirski).

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claim for refund of personal income tax for the year 1993.

FINDINGS OF FACT

1. Petitioners failed to file a timely New York State income tax return for 1993. Rather, they filed a New York State income tax return for 1993 more than six years late on October 18, 2000. On their return, they reported New York adjusted gross income of \$55,821.00, with

taxable income of \$35,363.14 after claiming an itemized deduction. On this taxable income, they calculated New York State income tax of \$2,068.00 for 1993. Since New York State income tax had been withheld from Mr. Rogers's wages in the amount of \$2,945.64, petitioners claimed a refund of \$877.64 representing the amount overpaid.

2. Petitioner Peter J. Rogers was employed by New York State Electric & Gas Corp. for his entire working career. After approximately 25 years of employment with this utility company, Mr. Rogers retired in February of 1994. In his last full year of employment with the company in 1993, Mr. Rogers's wages were \$55,461.48 which constituted nearly all of petitioners' income for the year.

3. Over the years, Mr. Rogers always prepared his own income tax returns and was accustomed to receiving a tax refund. For the year at issue, he did not timely prepare and file a return partly due to his transition from his long-term employment with the utility company to retirement where he would "take it easy." Preparing income tax returns, which included the itemization of deductions, apparently did not fit into his initial retirement plans for less strain and stress. Since petitioners were due a refund, Mr. Rogers, who was unaware of a period of limitations for filing refund claims, put off to the future the preparation of petitioners' tax return for 1993. As noted in Finding of Fact "1", it was not until the fall of 2000 that Mr. Rogers prepared and filed petitioners' 1993 New York State income tax return.

4. By a letter dated May 17, 2001, the Division of Taxation ("Division") rejected petitioners' refund claim as contained in their late-filed 1993 tax return for the following reason:

The New York State Tax Law does not permit us to allow the refund or credit claimed on your return [for 1993].

The Tax Law provides for the granting of a refund or credit if the request is filed within three (3) years from the time the return was required to be filed or within two (2) years from the time the tax was paid, whichever is later.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 687(i), “any income tax withheld from the taxpayer during any calendar year . . . shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year” Consequently, the \$877.64 overwithheld from Mr. Rogers’s wages during 1993 is properly deemed to have been paid by petitioners on April 15, 1994 (*see, Matter of Walker*, Tax Appeals Tribunal, September 23, 1999; *see also Davison v. Commissioner*, 64 TCM 1517, *affd* 9 F3d 1538 [wherein the Tax Court interpreted the comparable Federal provision at IRC § 6513(b)(1) in a similar fashion]).

B. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed¹ or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, *the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim* plus the period of any extension of time for filing the return. (Emphasis added.)

C. As noted in Finding of Fact “1”, petitioners filed their 1993 New York income tax return on October 18, 2000. This return was properly treated by the Division as a claim for refund (*cf., Matter of Miles*, Tax Appeals Tribunal, September 13, 1990). Further, since the Division received petitioners’ 1993 tax return and their claim for refund, which was contained therein, on the same day, i.e., October 18, 2000, petitioners’ claim for refund was therefore

¹ Petitioners contended that this was a typographical error and the language should have read “from the time the return was due.” The language italicized above, which imposes a further limitation on a refund claim, and has a complicated interplay with Tax Law § 687(i), as detailed in Conclusion of Law “A”, was not understood by petitioners, which is of no surprise given the intricacies of the Tax Law.

“within three years from the time the return was filed,” and under Tax Law § 687(a), “the amount of the . . . refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim” Since the overwithheld tax of \$877.64.00 was not paid within the three years immediately preceding October 18, 2000, but rather is properly deemed paid on April 15, 1994, as noted in Conclusion of Law “A”, petitioners’ claim for refund must be denied.

D. The Tax Appeals Tribunal in *Matter of Burkhardt* (January 9, 1997) noted that New York’s income tax refund procedures have been recognized as a “constitutionally sound scheme which . . . simultaneously [respected] the State’s fisc [citation omitted].” Consequently, the limitations period of three years described above is, without any doubt, legally valid.

F. There is no basis in the law to waive the limitations period based upon petitioners’ contention that the instructions for filing 1993 New York income tax returns included no information concerning a limitations period for filing refund claims. Further, petitioners argue that it is unfair not to grant their refund when the State has the authority to assess additional tax against a taxpayer with no regard to a period of limitation when a taxpayer has failed to file a tax return. However, this contention does not provide a legal basis to waive the three-year period of limitations noted above. Even in the very extreme case where a senile taxpayer, who was 93 years old, mailed a check for \$7,000.00 instead of \$700.00 to the Internal Revenue Service, the United States Supreme Court, in reversing the federal Court of Appeals, recognized that there was no legal authority to waive the period of limitations for filing a refund claim (*United States v. Brockamp*, 519 US 347, 117 S Ct 849, 136 L Ed. 2d 818, *rev’d* 67 F 3d 260). Finally, the 1994 and 1995 tax years are not at issue in this proceeding, and petitioners’ contention that any tax

due for those years must be reduced by their overpayment of tax for 1993 is not addressable herein.

G. The petition of Peter J. and Donna M. Rogers is denied and the Division's denial of petitioners' claim for refund dated May 17, 2001 is sustained.

DATED: Troy, New York
December 26, 2002

/s/ Frank W. Barrie
PRESIDING OFFICER